IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.474/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : October 18 , 2006

Heard Mr. Lambat, Advocate for the appellants and Mr. Sirpurkar, Advocate for the respondent.

By this second appeal, the appellants takes exception to the judgment and decree dated 18th January 2006 passed by First Adhoc Additional District Judge, Chandrapur in Regular Civil Appeal No. 43/1998 dismissing the appeal filed by the appellants-defendants against judgment and decree dated 30.3.1998 passed by Civil Judge, Jr. Dn. Sindewahi in Regular Civil Suit No.45/96.

The plaintiff filed the above suit against defendants for declaration and

possession of the suit land and in the alternative for partition and mesne profits. The suit was contested by the defendants. The defendants resisted the claims of the plaintiff on the ground that they were in adverse possession of the suit property. The trial Court, upon appreciation of the evidence led by the parties, held that the suit properties mentioned in schedule A, B, C of the plaint are joint family property and the plaintiff had 1/4th undivided share thereof.

Aggrieved by the decree passed by the trial Court, the defendants preferred appeal, which was dismissed by the lower appellate Court. The lower appellate Court held that the plaintiff was entitled to 1/4th share in the suit property and as such he was entitled to partition and separate possession of his share in the suit property.

Mr. Lambat, Advocate for the appellants submitted that both the lower courts have erred in holding that the plaintiff had 1/4th share in the suit property and further that the defendants had failed to

prove the adverse possession in respect of the suit property.

Per contra, Mr. Sirpurkar, Advocate for the respondent-plaintiff submitted that the findings given by the trial Court which have been confirmed by the lower appellate Court that the suit property was the joint family property, and that the plaintiff had 1/4th share in the said property is based upon proper appreciation of the evidence, oral as well as documentary, relied upon by the parties.

I have considered the submissions made by learned counsel appearing for the parties.

I am unable to accept the submissions made by learned counsel for the appellants. In my opinion, the trial Court was right in holding that the suit property was the joint family property and that the plaintiff had 1/4th share in the said property. The finding given by the trial Court that the defendants had not proved adverse possession in respect of the suit property cannot be faulted having

regard to the evidence led by the parties. In my opinion, the lower appellate Court was also justified in dismissing the appeal since the findings recorded by the trial Court were based upon proper appreciation of the evidence led by the parties. I do not find any ground to interfere with the concurrent findings given by both the courts below. No substantial question of law is involved in the present appeal. Hence, the appeal is rejected.

C.A. No. 5248/06

In view of dismissal of second appeal, nothing survives in the application. Hence, the civil application is dismissed as infructuous.

JUDGE

A.